

OLC 78-836/5
1 August 1978

MEMORANDUM FOR THE RECORD

SUBJECT: Recent Developments on S. 3314, Federal Tort Claims Act

1. The undersigned met for one hour with Mrs. Ricky Tigert of the Senate Judiciary staff regarding our few remaining problems with the Federal Tort Claims Act Amendments, S. 3314. This bill, if passed, would insulate certain Federal Government employees from suit for torts committed within the scope of their authority.

2. I explained to Mrs. Tigert that it is the position of CIA that to exclude former employees, as the bill now does, from coverage might have a chilling effect on valid overseas operations. It was pointed out that these people were being excluded in an arbitrary manner since their potential for or actual liability would be determined solely by a retirement date. For example, employee A who committed a Constitutional Tort in 1977 and retired in 1980 could be personally liable on the cause of action arising in 1977 if the suit was initiated after his 1980 retirement date; whereas, on the other hand, employee B, having committed a similar tort in 1977 and not retiring prior to initiation of the suit would not be held personally liable.

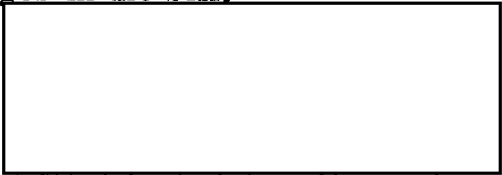
Although admitting that this might be inequitable, the Committee's position is that, because former employees would not be subject to the bill's disciplinary provisions, personal liability or at least the option thereof must be retained in the case of former employees.

The Department of Justice is fighting this position vigorously with the ACLU and others on the opposing side.

3. A second major point was raised regarding the unfettered and unreviewable discretion of the reviewing body (presumably I.O.B.) in the disciplinary proceeding to allow the complainant the right to examine and cross examine witnesses. I asked if it might not be best to tack on to this our standard "but for" clause limiting this to information or individuals not coming under relevant Executive Order or national security provisions. Mrs. Tigert allowed that this she would consider. I offered to provide draft language and Legislation staff is working on the same. FBI, has, per my request, promised to forcefully raise this oversight with Department of Justice today.


4. A final issue raised dealt with the, as yet unclear requirement that regulations promulgated by the reviewing body be subject to public notice and Judicial review. According to Mrs. Tigert this would involve simply the publishing of such unclassified rules and regulations in the Federal Register, allowing for public comment via letter. The bill does not make this clear and, therefore, we are preparing amendatory language towards that end.


5. All of the foregoing matters have been discussed with the FBI and relayed to Justice who, on the insistence of this office, has already secured a number of favorable changes in the bill.


Assistant Legislative Counsel

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OLC  (1 August 78)

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Approved For Release 2006/02/07 : CIA-RDP80S01268A000400020015-22
Journal - Office of Legislative Counsel
Monday - 31 July 1978

Fred Tort Claims

25X1 4. [] LIAISON I spoke with Tom Moore, Senate Select Committee on Intelligence staff, regarding provisions of new material on Angola. I told Moore that we were working on it and would get to him what we could as soon as possible.

25X1 5. [] I spoke with Sam Hoskinson, National Security Council, regarding materials which were forwarded to his office late last week. He is currently reviewing the documents and will get back to us on those. He made several suggested changes to our response [] which I have relayed [] 25X1

25X1 6. [] LEGISLATION I spoke with Stan Taylor, Senate Select Committee on Intelligence staff, regarding the status of Anti-Terrorism bill. Mr. Taylor said he was meeting with Senator Adlai Stevenson (D., Ill.) at 11:00 a.m. today on that topic.

25X1 7. [] LEGISLATION I spoke with Parks Stearns, FBI, regarding our continuing problems with Senate Federal Torts Claims Act bill. He said he would carry the ball to Justice.

25X1 8. [] LIAISON Dick Giza, House Permanent Select Committee on Intelligence staff, called with a request for the following: (a) Lists of NIEs and NIAMs which have been produced this year and which are presently scheduled; (b) five copies of "International Terrorism;" [] I have passed this request on to [] NFAC/CSS. 25X1

25X1 9. [] LIAISON Loch Johnson, House Permanent Select Committee on Intelligence staff, called to tell me that he would have to cancel his appointment with Zeke Zellmer, D/DDS&T, for this afternoon at 1400 hours. I have rescheduled Mr. Johnson with Mr. Zellmer for tomorrow afternoon at 1430 and have notified Mr. Johnson's secretary, Catherine Wilson.

25X1 10. [] LIAISON Mr. Jackson, OSD/SEC, called asking about Diane LaVoy's, House Permanent Select Committee on Intelligence staff, clearances. I told Mr. Jackson that she has [] and others. Apparently, the DIA files do not reflect this.

CONFIDENTIAL

31 July 1978

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NOTE FOR:

FROM:

SUBJECT: Federal Tort Claims Act

1. I spoke with Parks Stearns (FBI) this morning to review strategy on the pending Federal Tort Claims Act (S. 3314).

2. He informed me that he was meeting with Senator Dennis DeConcini's (D., Ariz.) staffer on Judiciary (not further identified) this afternoon to set up a meeting between the Senator and Judge Webster to discuss the FBI's and, by association, our problems with S. 3314. Stearns feels that Senator DeConcini will be most receptive to the FBI's point of view. He promised to apprise our office of the results of that encounter.

3. Towards a similar end, I will be meeting this afternoon with Mrs. Ricky Tigert of the Committee staff to raise with her our several remaining problems with the bill. Although all present indications are that Senator Metzenbaum (D., Ohio) (the bills mover) considers the present bill his "bottom line" and is therefore reported inflexible, the meeting with Mrs. Tigert will at least serve to put her on notice as to our objections and the reason behind them.

Assistant Legislative Counsel

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ADDENDUM TO JOURNAL

OFFICE OF LEGISLATIVE COUNSEL

Friday - 28 July 1978

1. [REDACTED] LIAISON Received a call from Mark Gitenstein, Senate Judiciary Committee staff, formerly of the Senate Select Committee on Intelligence staff. Gitenstein said a friend of his, [REDACTED] had recently been rejected for employment with the Agency. Gitenstein said [REDACTED] was very interested in employment here and would like to know if anything such as further education or language training would improve his chances. I told Gitenstein I did not know what I could say on the case but I would look into it.

I asked Gitenstein if he would meet [REDACTED] OLC to discuss the amendment before the Senate Judiciary Committee to the Federal Tort Claims Act. After some inconclusive discussion, I told Gitenstein I thought I should [REDACTED] call him directly.

2. [REDACTED] LIAISON Accompanied Senate Select Committee on Intelligence staff members Mike Gelack and Tom Crowley and House Permanent Select Committee on Intelligence staff members Fred Hull, Ira Goldman and Arlene Marek to a series of orientation briefings on CIA. Participants were [REDACTED] O/Compt, who gave an overview of the Agency, [REDACTED] A/DDS&T, [REDACTED] C/PCS/LOC, [REDACTED] CSS/NFAC, and [REDACTED] EO/DDA.

3. [REDACTED] LIAISON Received a call from Tom Moore, Senate Select Committee on Intelligence staff, and discussed the status of his request on Angola.

4. [REDACTED] LIAISON Took a call from Elaine George, in the office of Senator Paul Sarbanes (D., Md.). George said that Clifford Hackett, on the Senator's staff, had just received a copy of an unclassified Agency publication entitled "Economic Indicators Weekly Review" and wanted to be put on regular distribution for the publication. I explained the Director's new policy of providing unclassified studies to Senators routinely and that the Senator's office would regularly get all these publications through the Senate Select Committee on Intelligence. George said she would pass this along.

CONFIDENTIAL

28 July 1978

NOTE FOR THE FILE

Inspector General staff, [redacted] called and stated they felt we could live with S. 3314, Federal Tort Claims Act Amendment. He stated that, of course, there would be an increased Administrative burden on the Agency should the bill be voted into law.

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Assistant Legislative Counsel

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Fed. Tort Claims

OFFICE OF LEGISLATIVE COUNSEL

Thursday - 27 July 1978

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1. [REDACTED] LEGISLATION Called Sheila Fifer, IC staff, to bring her up to date on the "Federal Accounting and Auditing Act of 1978," H.R. 12171. I informed Ms. Fifer that I would send her a copy of Admiral Turner's letter to Chairman Edward Boland (D., Mass.), House Permanent Select Committee on Intelligence, asking that the Committee take "sequential referral" of the bill. I told her that we would keep her informed.

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2. [REDACTED] LEGISLATION Called Bill Hammill, Office of General Counsel at NSA, to inform him of the latest developments surrounding H.R. 12171, the "Federal Accounting and Auditing Act of 1978."

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3. [REDACTED] LEGISLATION I spoke with Park Stears, FBI, Legislative Affairs, on FBI efforts toward amending of S. 3314, Federal Tort Claims Act. Mr. Stears promised to send via courier their proposed amendments (most of all of which help CIA as well).

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4. [REDACTED] LIAISON James Tomashoff, in the office of Representative John J. McFall (D., Calif.), called on behalf of a college class studying terrorism and asked on their behalf if we had an unclassified bibliography on the topic. CSS/NFAC has access to a bibliography and will provide to us for forwarding to Mr. Tomashoff.

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5. [REDACTED] LIAISON Called Howard Liebengood, in the office of the Minority Leader of the Senate, on the status of the compartmented clearances for James Cannon, Administrative Assistant, and William Hildenbrand, Secretary for the Senate Minority. Liebengood said that Senate Minority Leader Howard Baker (R., Tenn.) would send the necessary letter on updating the background investigation to DOD.

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6. [REDACTED] LIAISON I was finally able to get in touch with Pete Bonner, Senate Appropriations Committee staff, on the treatment of the excludable aliens matter in the State/Justice appropriations bill. Bonner gave me the background of the report language and commented that the matter went far beyond the intelligence issues which were of interest to us, mentioning illegal immigrants in the Southwest border and narcotics.

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